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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/22/2004

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/728,697

Applicant(s)

STAGG ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11,13-18,20-25,27,29-33,35-39,41,42,44-52 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11,13-18,20-25,27,29-33,35-39,41,42,44-52 and 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. The Amendment filed June 29,2004 has been entered. Claims 10 and 26 have been canceled, and claim 56 has been added. Claims 1,2,4-9,11,13-18,20-25,27,29-33,35-39,41,42,44-52, and 56 remain pending in the application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4,5,11,13, 17,18,20,21,27,29,35,36, 37, 38,41,42,44,45,47, 51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).

4. Regarding claims 1,2,4,5,11,13, 17,18,20,21,27 29,35,36, 37, 38,41,42,44,45,47, 51,52 Riddell teaches a package and a method of packaging a product with a tear resistant film that does not normally tear in clean manner ,such as polyethylene and oriented polypropylene, and a filament reinforced tearable tape (i.e. item 8) that is at least 8 mm in length (i.e. ½ in wide) with tearable center section , a non-tearing longitudinal edges and a tab that provides a clean tear edge, wherein the film does not include a weakened section by the tab, and the package includes a base holding at least one article with the film conforming to the shape of the base (See Abstract, Column 1, line 19 to Column 2, line 25, Column 3, line 4 to Column 4, line 9, Figures).

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Riddell further teaches the film must a tear strength that is sufficiently low for opening yet provide a sufficient shipping and display stiffness and durability (Column 2, lines 6-17), but is silent in teaching a puncture-propagation tear (PPT) of at least be 20 N/ply as recited in claims 1,17, and 38.

5. Osborn is relied on as evidence of the conventionality of polyethylene films used for commercial bags used in shipping (Column 1, lines 1-25). The Osborn teaches conventional polyethylene film based packages, made of 6 mil LDPE and 9 mil LDPE, that are used for shipping products have a PPT of 48.9 N/ply and 97.9 N/ply (i.e. 11 and 22 lbf) , respectively (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Riddell teaches the film must be durable and strong enough for shipping and Osborn teaches the conventional commercial polyethylene film package (i.e. commercial bags) that is durable strong enough for shipping has a PPT value of at least 20 N/ply. Thus, one would have been substituting one type of polyethylene film for another for the same purpose: mercantile packaging that is durable and suitable for shipping.

6. Claims 8,14,15,16,24, 31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).as applied to claims 1,2,4,5,11,13, 17,18,20,21,27,29,35,36, 37, 38,41,42,44,45,47, 51,52 above, further in view of Kim (US 5203634).

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7. Regarding claims 8,14,15,16,24, 31,32, Riddell teaches a tearable tape applied to the exterior surface of the film and a strip applied to the interior of the film to initiate tearing. The tearable tape has a central section that tears away such that guides on either side of the central section remain (Column 3, lines 19-35). However, Riddell is silent in teaching a tearable strip that is internally tearable mounted on *both* the exterior and interior of the film or a cover tape on the surface of the film opposite the tearable strip. Kim '634 teaches that applying one strip to the interior of the film and a tape to the exterior of the film, like that which is taught by Riddell, results in manufacturing problems. Kim '634 teaches the problems are overcome by applying an internally tearable portion with guides on both the interior and exterior (i.e. a cover tape) of a given container wall (Column 1, line 17 to column 2, line 53). Therefore, it would have been obvious to include an internally tearable tape strip with guide portions on both the exterior and interior of the film surface (i.e. thus providing a cover tape) since it improves the manufacturing process and one would have been substituting one type of internally tearable tape strip design for another for the same purpose.

8. Claims 1,2,4-8,11,13,14, 17,18,20,21-24, 27, 29,30,33,35-39, 41,42,44- 48,51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. (US 3179326) in view of Osborn (US 4397703) and Leseman et al. (US 5080957).

9. Regarding claims 1,2,5,8, 13,14, 17,18,21,24, 29,30,35-39, 41,42,45,47,48,51,52, Underwood et al. teach commercial gum or cigarettes packages wrapped in cellophane are cleanly tearable with conventional tearable tapes, but these

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wrappers, which are notoriously well known to conform to the same of an article as recited in claims 35 –37,41,51, were not replaceable by tear resistant polyethylene, or specifically LDPE film-based wrappers, because LDPE films were not cleanly tearable using conventional tearable tapes. To solve the problem of opening the enclosed region formed by a LDPE-based film in commercial packages, as recited in claims 5,21, 45, and thus substituting LDPE based films form cellophane, Underwood et al. teach applying a single tearable tape, as recited in claims 14,30, of uniaxially oriented polypropylene, or a tensilized PP , either above or below the surface of a LDPE film as recited in claims 8,24,47,48 that includes a central portion with a tab and two longitudinal portions on either side of the central portion that remain attached to the surface of the LDPE film in order to guide the central portion to cleanly remove the underlying unweakened portion of LDPE, as recited in claims 1,13, 17,29,38,52 in the normally non cleanly tearable LDPE film as recited in claims 2, 18,42 (Column 1, lines 10-37 and 45-70, Column 3line 69 to Column 4, line 21, Column 6, lines 46-52, Column 7, line 50 to Column 8, line 51, and Figures 2,3,5). However, Underwood et al. are silent in teaching the particular puncture-propagation tear resistance (PPT of at least 20 N/ply) of LDPE films used in commercial packaging that would desirably replace cellophane, and the particular type of tear tape such as reinforced strapping or filament reinforced tapes as recited in claims 1,17, and 38.

10. Osborn is relied on as evidence of the conventional LDPE films used in mercantile packages (i.e. commercial bags, Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for commercial packages have a PPT of 48.9 N/ply

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or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to modify Underwood et al. and select an LDPE film of at least 20 N/ply, since Underwood et al. teach a tape suitable for cleanly tearing an LDPE film, with the intention that the LDPE can be used for enclosing commercial goods and Osborn teaches conventional LDPE films used to enclosed commercial goods have a PPT value of at least 20 N/ply. Thus, one would have been substituting one LDPE film for another for the same purpose: enclosing commercial goods.

11. Leseman et al also teaches tear reinforced tear tapes that are an improvement on oriented flat tapes, such as the one taught by Underwood et al., in that they provide very good cross-direction tear resistance, whereas conventional oriented flat tapes do not (column 2, lines 26-52, Column 5, line 60 to Column 6, line 13). Therefore, it would have been obvious to further modify Underwood et al. and select the reinforced tape of Leseman et al. since Leseman et al. also teach the reinforced tape is an improvement upon oriented or tensilized flat tapes because they are not nearly as susceptible to cross-direction tears as oriented flat tapes, and thus would further enhance the "clean tear" purpose of the tape taught by Underwood et al.

12. Regarding claims 4, 20, and 44, Underwood et al. teach LDPE is more flexible and more extensible than cellophane, which tears easily and leaves smooth edges, and consequently forms erratic wandering tear path (Column 1, lines 15-30). In other words, LDPE exhibits stretching before tearing.

13. Regarding claims 6,7,22,23 and 46, Underwood et al. teach the tape is suitable for opening packages made from polyethylene, LDPE, HDPE and other thermoplastic films., with the intention of the package containing a commercial item (Column 1, lines 10-34, Column 8, lines 43-49). Osborn teaches commercial packages made from LDPE have the conventional PPT of 48.9 N/ply or 97.9 N/ply. However, Underwood et al. are silent in teaching using multilayer films with a first layer of polyethylene and a second layer of polypropylene. However, to modify Underwood et al. and select any particular thermoplastic multilayer material would have been an obvious matter of design, *depending* on the particular PPT of the multilayer film selected since Underwood et al. teach a tape suitable for opening conventional polyethylene, or LDPE, films with the intended use in commercial packages and Osborn teaches conventional commercial LDPE-based packages are known to have a PPT of 48.9 N/ply or 97.9 N/ply. One would have been substituting one conventional commercially acceptable thermoplastic film for another.

14. Regarding claims 11 and 27, Underwood et al. teach forming the tape from a 2 inch roll (Examples in Column 5), and although silent in teaching any particular width *applied* to the package, it would have been obvious to select a width of at least 8mm since Underwood et al. teach forming the tape from a 2 in. wide roll. Furthermore, to select any particular width less than 2 inches would have been an obvious matter of choice, depending on the desired tear size since the central portion of the tape is utilized to remove the film from the package.



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15. Regarding claims 33 and 39, Underwood et al. teach replacing wrappers surrounding chewing gum packages with LDPE, but is silent in teaching not an edible item or food *per se*. However, once it was known to substitute LDPE wrappers with tearable tapes for cellophane wrappers for the conventional chewing gum package, to make such a substitution on a food package would have been an obvious matter of design choice depending on the type of outer wrapper desired since, as taught by Underwood et al., LDPE wrappers are more flexible and more difficult to shear (Column 1, lines 10-34) and one of ordinary skill in the art would recognize the packaging requirements of chewing gum would be shared with edible candies.

16. Claims 9, 25, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. (US 3179326) in view of Osborn (US 4397703) and Leseman et al. (US 5080957), as applied to claims 1,2,4-8,11,13,14, 17,18,20,21-24, 27, 29,30,33,35-39, 41,42,44- 48,51,52 above, further in view of Hodson et al. (US 6316036 B1).

17. Regarding claims 9 and 25, although Underwood et al. teach utilizing an outer film in combination with a commercial product such as chewing gum and a tear tape attached to the interior surface of the film. Underwood et al. are silent in teaching including indicia such that the tape does not obstruct the indicia. Examiner takes official notice that it was notoriously well known to incorporate indicia throughout the entire interior surface or exterior surface, or any surface in between, of a film enclosing a commercial package, such as chewing gum, to communicate product information or

packaging information to the consumer. Hodson et al. are relied on as evidence of the conventional commercial package utilizing an interiorly attached tear tape that comprises an ink/print layer throughout an internal the entire film, and thus indicia would be opposite, but not obstructed by the tear tape attached to the interior surface (Column 2, line 57 to column 3, line 28). Therefore, to include such indicia on the film of enclosing the chewing gum package of Underwood et al. above the tape applied to the interior surface such that the tape not obstruct the view of such indicia from the exterior surface, would have been an obvious matter of design choice, since it was notoriously well known in the art to include to include an indicia on a commercial product package to communicate product information or packaging information to the consumer and it was known to include an entire internal indicia layer within the film such that a tear tape attached on the interior surface of the film would not obstruct the indicia. One would have been substituting one conventional commercial package film for another.

18. Regarding claim 56, Underwood et al. teach using tear resistant polyethylene films for enclosing chewing gum packages with an interiorly attached tear tape to access the gum, but are silent in teaching a food product in direct contact with the film. Hodson et al. also teach a commercial package utilizing tear resistant polyethylene films an interiorly attached tear tape, but the package comprises a food product (e.g. cheese ) in contact with the film (Column 2, lines 45-56 and Column 3, line 1-48 in light of the Figures). Therefore, it would have been obvious to modify Underwood et al. and include a food product in direct contact with the film since Hodson et al. teach polyethylene films with an interiorly attached tear tape is also suitable for direct contact

with food. One would have been substituting one conventional consumer good for another in polyethylene film.

19. Claims 15,16, 31,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. (US 3179326) in view of Osborn (US 4397703) and Leseman et al. (US 5080957), as applied to claims 1,2,4-8,11,13,14, 17,18,20,21-24, 27, 29,30,33,35-39, 41,42,44- 48,51,52 above, further in view of Kim (US 5203634).

20. Regarding claims 15,16, 31, and 32, Underwood et al. teach applying the tape having a removable central portion to either the inner or outer surface of the film (e.g. Figures 2 and 5) However, Underwood et al. are silent in teaching a tearable strip that is internally tearable mounted on *both* the exterior and interior of the film or that the tape has a cover tape on a surface opposite the tape. Kim also teaches flexible containers using tapes with pull tabs and removable central portions to tear an opening in the container. Kim is relied on as evidence of the conventionality of internally tearable portion and guides on both the interior and exterior of a given container wall, wherein one of the many advantages is the enhancement of tear opening feature (See Column 2, lines 19-25, Column 8, lines 11-27, Column 8, lines 60-65, Figures 8,19 and 20). It also follows that the exterior tape would be a cover tape on the surface opposite the interior tape. Therefore, it would have been obvious to modify Underwood et al. and combine both embodiments taught by Underwood et al. such that the package had both an internal and external tape, and thus a cover tape on the surface opposite the internal tape, wherein the central portions are removed together since Kim teaches this

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combinations would lead to an enhancement of the tear opening feature. One would have been substituting one type of tape arrangement (i.e. single sided) for another for the same purpose: forming a tear opening in a flexible package using a tearable tape.

21. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. (US 3179326) in view of Osborn (US 4397703) and Leseman et al. (US 5080957), as applied to claims 1,2,4-8,11,13,14, 17,18,20,21-24, 27, 29,30,33,35-39, 41,42,44- 48,51,52 above, further in view of Zurawski et al. (US 5885630).

22. Underwood et al. teach using polyethylene films, such as LDPE, for enclosing chewing gum packages, but are silent in teaching any shrink-wrapping or skin packaging.

23. Zurawski et al. teach examples of conventional forms polyethylene wrappings for gum packages include skin packaging (e.g. blisters packs) and shrink wrap (Column 3, lines 1-25). Therefore it would have been obvious to modify Underwood et al. and utilize the polyethylene wrappers in any conventional form known to be associated with commercial gum package wrappers, such as shrink wrapped or skin packaging, since one would have been substituting one conventional gum package wrapper form for another.

***Response to Arguments***

24. Applicant's arguments with respect to amended claims, in particular the limitation of "wherein the tearable tape strip comprises one of reinforced strapping tape and filament reinforced tape" recited in claims 1, 17, and 38, have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

26. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761



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